

LAKE COUNTY PLANNING BOARD
June 13, 2012
Lake County Courthouse, Large Conference Room (Rm 317)
Meeting Minutes

MEMBERS PRESENT: Bob Kormann, Sigurd Jensen, Steve Rosso, John Fleming, Brian Anderson, Jerry d'Aquin, Rick Cothorn

STAFF PRESENT: Joel Nelson, Robert Costa, Karl Smithback, Lita Fonda

Bob Kormann called the meeting to order at 7:01pm.

Motion by Rick Cothorn, and seconded by Steve Rosso, to approve the March 14, 2012 meeting minutes as written. Motion carried, all in favor.

WOLF POINT WAY MINOR SUBDIVISION

Robert Costa presented the staff report. (See attachments to minutes in the June 2012 meeting file for staff report.) John asked for clarification on the lot borders. Robert showed these on the posted map. Robert continued with the staff report. He suggested that condition #16 be mirrored in the perpetual conditions.

Steve checked that the reference to a 5-foot wide driveway on pg. 3 regarding lot 1 was correct. Robert clarified that this was how it measured out on the preliminary plat.

Jerry asked about how to address the 2-acre fire requirement versus the current proposal. Robert replied that this was discovered later in the subdivision review. He hadn't received something from Carstens yet that addressed this. It wasn't clear how to address this yet. The best thing to do would be to require the owner to follow the rules or address the matter. That's why the condition was proposed at this point. He clarified they were recommending approval, subject to the owner addressing this matter.

Jerry said this couldn't be addressed with 3 lots and this amount of land. Robert said if they didn't submit and get approval for a variance, then they would have to come back with a proposal that would comply. Jerry thought this was a Catch-22. John said there might be another way to address it other than lot size.

Jerry asked for an explanation on financial duress and hardship. To him, the alluded financial hardship arose from the fact that the development was intended to be 3 lots rather than two lots. There were comments that strict compliance with regulations would impose an undue hardship on the owner. If you didn't develop it or if you developed it as two lots, then there was no hardship. Who imposed a hardship on whom, when they claimed a relief on the hardship? Robert noted that a variance request on the matter hadn't been received, so he couldn't say whether there'd be a necessary hardship that would be available to approve it since he hadn't received the information or reviewed that. He thought it might be difficult to find a hardship if they proposed three lots. It might be difficult to overcome other issues, such as public health and safety.

Someone asked how many other residences Beaver Haunt Lane served. Robert responded that it appeared to serve lot 1 and a southern adjacent parcel. The internal looping road appeared to give access to the northeastern adjacent parcel and potentially the northern adjacent parcel. Depending on how those lots were able to access, they could potentially use Beaver Haunt Lane as well. The shared use agreement only addressed the proposed lot 1 and the southern adjacent parcel. It did appear like there might be other users. It was difficult to tell. Steve asked if the two northern parcels/ residences came off of Wolf Point. Robert thought the northern parcel was a bed and breakfast owned by Fidelity Energy, with an access off of Kings Point. He thought they accessed either off of Wolf Point Way or Kings Point Road. Steve said there were two turnouts shown. Robert described that when staff first visited this property, there was a small trail wide enough for people to walk up a hill through potentially lot 3 or the northeast adjacent parcel to get access to the northern parcel. It wasn't clear that this was something to drive up.

Steve mentioned two issues: the erosion/ sediment control plan and the minimum lot size question for the fire risk. Understanding how the slope length, the amount of slope and the average slope were determined was important for these. He referred to the dark portions on the map of slopes over 20%. They were broken up with lighter portions. He asked where there was at least 100-foot long section of steep slope. Robert explained the staff interpretation of the regulation was that it wasn't just slopes that were 20% or greater. It was sustained slopes with an average of 20% or greater. They would be looking at the average slope over the course of the 100 feet. Steve asked how average slope, given as 11%, was determined. Robert clarified that had been determined by the subdivider's agent.

Bob asked for Board input on the Fire Chief request for \$250. He thought \$100 was too little, but it was what the Board historically had done. Did the Board want to set a new standard? Sigurd asked if fire department requests would regularly be \$250 now. Robert wasn't sure. The fire chief didn't justify the increased amount. It appeared he had typically in some cases requested \$250, which would be up to the Board. Bob thought they hadn't granted the request in the last case. Steve thought the fire chief said he could serve the property in his report. He didn't bring up fire-fighting problems for the property. Robert asked if Steve was referring to the report from the Polson Fire Chief or from the Tribal Fire Division. Steve asked if either referred to problems. He also asked about the goal on pg. 25 of the Lake County Growth Policy. There was no goal printed after chapter 4, goal 8. Joel thought it might have been a typo.

Robert listed requirements, concerns and remarks from both the Polson Fire Chief's comments and the comments from Curtis Matt of the Tribal Fire Division.

Joel answered the question regarding chapter 4, goal 8 of the Growth Policy. The goal was to protect lives and property from damage caused by wildfire. The finding was that it would comply with those goals and policies when they had a subdivision regulation with that matter.

Jerry asked if the roads complied with current County and State regulations, as required in one of the fire reports. Robert replied that the two roads being reviewed for the subdivision were Wolf Point Way, which was a public road that didn't meet the County standards, and Beaver Haunt Lane, which was located in a villa strip. It was privately maintained and did not comply. Jerry

concluded that the fire chief's recommendation was that he could not serve this, since one requirement was that the roads meet state and county requirements. Robert suggested they could request further comment from the fire chief. Jerry mentioned the applicants could get another variance.

Diana Luke spoke on behalf of the applicants. Regarding the slope analysis, they prepared a slope analysis, with different colors for the different slope percentages. They didn't see sustained slopes greater than 100 feet, so they disagreed with Robert on this, as far as the requirements for the slope and erosion management plan. She explained how she found 11% as the overall slope for the subdivision was by taking the lowest contour by the lake and the distance. In this subdivision, the topography swung back up to the northeast. Topography mapping was performed on-site; it wasn't taken from a USGS quadrangle map. Steve asked if the distance Diana took between the highest point and lowest point was a straight-line distance or if it curved to go perpendicular to the contours. Diana described that she took a straight-line distance across lots 1 and 2, and then another straight-line distance that she indicated on the map, because the topography changed. If you looked at lots 2 and 3 on their own, you'd have a much greater slope. It was a unique piece of property.

In speaking to the variances, the property was developed, and then the subdivision regulations came into effect. Now with the application to subdivide, that's why you see a list of variances because there's an existing easement crossing the property that had the telephone and power in it. The same thing was true for the right-of-way. The right-of-way platted for Safety Bay Villa in mid-century was 40 feet wide for both Wolf Point Way and Beaver Haunt Lane. They were requesting a variance to add 10 feet on the property to be developed, and then if the adjacent neighbor were to develop, then they would provide the 10 feet on their side of the road easement. The Beaver Haunt Lane variance request was basically since the existing house on lot 1 had been utilizing Beaver Haunt Lane. The two new subdivision lots would access Wolf Point ~~Way~~Lane, so no additional traffic would be added to Beaver Haunt Lane. They would like to utilize it as it stood.

Diana spoke regarding the fire discussion. They had two options. They could mitigate some of the concerns in the [inaudible] fire risk assessment. They were 2 points into the moderate category. The other option was a variance to the lot size.

Diana spoke about some of the conditions. She had no comments on the variances or the recommendations associated with them. On condition #13, she repeated that she thought their slope analysis showed there weren't sustained slopes greater than the length of 100 feet. She asked that item #13 be stricken. On item #16, she asked in what manner parking shall be prohibited on Beaver Haunt Lane, to clarify. On #19, she asked if the proposed dust control plan could be placed in the covenants so it would be in a format that would be enforceable by the other residents.

Diana checked with Steve about his drainfield question. Steve commented that he saw two drainfield easements on lot 1 but none on lots 2 or 3. With the wells and the 100-foot circles, it didn't look like there was a lot of room for more drainfields. Diana answered, using the map. Because of the proximity to Flathead Lake and steep slopes, they put a drainfield easement for

lot one on lot 2. Lot 2 had its own drainfield on lot 2. She pointed out locations, at Steve's request.

Steve returned to discussion of the slope analysis. He suggested that if you followed a path perpendicular to the contours rather than a straight-line distance from lowest to highest point, the distance would be longer. The 11 % average would likely drop to below 10% and would fall in a different range of slopes. Joel checked if they used the method in the subdivision regulations for calculating the average slope. There was a formula to be used. He read from that section, where the subdivision administrator could request the subdivider to provide the necessary information to demonstrate accurate slope calculations. Applications might include an alternate method of slope calculation for consideration based on the peculiarities of the site when the calculations were prepared by a registered surveyor, licensed engineer or other qualified professional. The method of calculation had to be rational and was subject to acceptance by the subdivision administrator. For this project, they hadn't reviewed a request for an alternate calculation. He asked if preliminary calculations had been run using the subdivision regulation formula. Robert didn't think this had been done. Jerry asked Diana about what she used, and she said she simply used rise over run for the overall slope of the lot. Their engineer calculated the slope analysis. Steve thought they'd want to go perpendicular to the contours, which would be the line in which a ball would roll down the slope.

Diana answered Steve's question about the 5-foot driveway. It was actually 8 feet wide. They were required to show a proposed driveway. They needed to correct this to 12 feet.

John inquired as to what Diana's response was to not accepting the variance on the buffer zone. How big of a deal was this to the applicants? Diana said she waffled over this, which was why she originally put the proposed wording in the buffer management plan. The wording allowed a variance to address the specific circumstances if the house burned down or if they wanted to expand the footprint. The wording came from a surrounding zoning district. To her, it seemed more like a taking. They did have an alternate building site. She didn't think they'd use it, and would continue to keep their square footage down in the lakeshore protection zone.

Jerry asked if they had alternate sites for the septic and for replacement drainfields. Diana affirmed. DEQ required a primary and a replacement drainfield. Joel showed these on the map. Diana noted they would drop wider driveways on there. They also would get the Board color copies (for better legibility) when they had subdivisions in front of them.

Public comment opened:

Hu Beaver: He spoke as a neighbor. Beaver Haunt Lane was a county road on an access easement. It hadn't been maintained, other than by him and whoever. To say it had to be improved to other standards didn't make sense to him. No one else was using it, other than 2 cabins. To open it to further development would give an open corridor for silting and erosion straight into the lake. The way they had the lanes on the lots up above on Wolf Point Way, they couldn't have more than one access per thousand feet. Everybody had to share the same access and build another road along side the other road. That didn't make sense. There were other lanes on the road that turned off to other residences. He thought some of that stuff ought to be

forgotten. If they started to do something on Beaver Haunt Lane, he would oppose this subdivision.

Julia Lynn: She was the sister of Donna Morigeau, who submitted the letter in the packet. Her mom lived next door. She checked that the Board had a copy of the letter. When her mom passed away, she would be taking care of that land, which bordered the property in question on the west. They looked directly at this property. She reiterated what Hu Beaver said about the creation of 900 feet of roadway, added dust, and it would reduce the productive barrier of trees and vegetation. It was a very rural area, so they were concerned about increasing population density. She also brought up the issue of existing well water. Their shared well was 280 feet deep. She asked that the Board consider the points in Donna's letter.

Jeanne Cochran: She was half owner with Hu Beaver on the property to the south. She was against the proposal. If they didn't have enough land to subdivide it correctly, she didn't see where it needed to be divided. It was a nice wooded area. They didn't need more subdivisions out in the woods. There were too many variances. If they followed the variances, then they really ruined things. She didn't think it should be considered for subdivision.

Brad Cochran: He was Jeanne's husband. The applicants were trying to make 3 lots out of 2 lots. That was the problem, which was why there were so many variances. He didn't see a reason why they had these rules in place for 30 years, and then someone put in so many variances. There were no reasons for variances. Otherwise, why have zoning? Karen Huff was married to ~~the~~ Emil, the neighbor who owned the bed and breakfast. He was an independent oil and gas producer. There was no financial hardship. They also had a rental house next to the bed and breakfast. They just didn't need variances for what they had. He wasn't against dividing it with doing what they could do that was legal and on the books. They didn't need to change every rule.

Public comment closed.

Bob asked Robert to address some of the concerns raised in public comment. He asked specifically for some explanation of the variance process, and to address the concerns regarding Beaver Haunt Lane. Robert asked Hu Beaver to reiterate his main concerns on Beaver Haunt Lane. Hu responded that he was concerned about improving it to county standards. To bring it to county standards, you'd have to reduce the slope, and do the big cuts on the side. It was already a big land scar. Robert said that was one of the reasons that they approved of the variances. It appeared that there were multiple hardships that had nothing to do with the landowners. There were many noncompliant aspects of that road, which was why staff recommended approval. Joel added that the staff recommendation was to allow the road to be left as it was, with the exception of granting another 10 feet to the users of Beaver Haunt Lane on the north side. Steve said that the right-of-way would get wider, but the road wouldn't change. Brad C asked if the people with the new lots would be able to use that [inaudible]. Robert said no, that only lot one would be allowed access by Beaver Haunt Lane. Lots 2 and 3 would be allowed access via Wolf Point Way. Bob observed that lot 1 already used Beaver Haunt Lane.

Bob asked Robert to address the comments about variances. Robert asked Brad Cochran to reiterate his main concerns. Brad said that it seemed like if there were 8 rules, there were 9 variances, and every rule was being thrown away because they didn't want to comply. As he saw it, they were making a 2-lot subdivision into 3 lots, so the variances came into play. If they divided it into two, there wouldn't be this trouble. Robert explained that no variances were requested in regards to density. That property was located in what was known as the 1.5 acre per unit development density. The proposed division was at about 1.5 acres. No variances had been requested regarding how many lots or for the size of lots. Brad noted one of the lots was at 1.1 acres. Robert explained that the calculation for the allowed acreage was an average, so the total acreage would be divided by the proposed number of lots. In this case, it came out to about 1.51.

Steve asked Robert to point out the border between the zoning districts was. Robert showed where the Masumola zoning district boundary was, and where the Density regulations were in effect for zoning. Robert reiterated that the applicable zoning regulations were the Density Map and Regulations.

Bob mentioned to Julie L that as far as the well was concerned, the subdivision would go through the Dept. of Environmental Quality (DEQ) and they would look at the water situation and the wells and so on.

John asked if there were variances generated by the fact that there were 3 lots instead of 2, which would go away if there were only 2 lots. Robert said the proposal complied with the Density map rules. The minimum lots size mentioned regarding WUI (Wildland Urban Interface) was a different issue. John observed that the WUI issues would be addressed by changing to a 2-lot subdivision. Robert said apparently yes, if it fell into the correct category. Joel mentioned that they probably wouldn't need variance #1, depending on where they built. That was the variance with the easement bisection of the lot. It could make it worse. John said it depended on how they designed it. Joel mentioned the other variances were regarding roads.

Jerry referred to mention of the need to reduce the slope of the proposed lot 1 driveway. Robert clarified that the driveway needed to comply. The slope didn't necessarily need to be changed, unless it was proven there was no other way to do it. Jerry asked about the reference to hardships involving doing the earthwork required to bring Beaver Haunt Lane to county standards. Jerry asked whose hardship this would be. There was cost and dirt moving to do it, but he didn't see how that translated into the word 'hardship'. Robert said that was fair—maybe it wasn't the word to apply. There were a number of issues~~ed~~ regarding Beaver Haunt Lane. Some were addressed in the variance requests. Some of them were likely not. All of the ways that Beaver Haunt Lane was not compliant with the standards were not necessarily known. As part of the variance evaluation, staff interpreted and proposed that requiring the developer to bring the road up-to-date would put a hardship on the developer. Jerry said the regulations put a hardship on the developer, but it was the developer who was asking for the variance. Robert read from the variance evaluation in the staff report on this issue, starting on page 8, which referred to the topography and history of the road. He mentioned if the Board disagreed with those comments, they were welcome to request a change to those. Going back to fire protection, Jerry didn't see how you would drive a fire truck down that road. Robert said if this was a concern of the Board, one way to address it would be to have a condition requiring additional

comment clarifying that matter from both fire authorities. Bob said they already had 2 comments from 2 fire chiefs. Jerry noted the fire comments were conditioned on the road being up to county standards. Bob asked if they talked about the road being [inaudible] in the report. Steve said the Polson Fire Chief said something about having the road meeting standards. It sounded like a boilerplate comment. He also brought up the road widths requested by the fire chief that were above standards, such as driveways 18 feet wide and roads 24 feet wide with hard surfaces. These weren't in the requirements. Steve suggested meeting with the Polson Fire Chief to just talk about the Chief's concerns and what the regulations were and so forth. His comments seemed a little off the wall. Joel said the Fire Chief's comments were consistent with his past comments for former subdivisions. They had talked with him; he used the International Fire Code.

Diana suggested adding a sentence to condition #12, to address utilizing Beaver Haunt Lane in its current condition, as approved by the variance. This might be appropriate.

Steve asked how long the fire fee had been at \$100. Joel and Sigurd said it had been a long time. Steve said it might be time to move it up. Brian thought you needed to justify it. John supported an increase, but he didn't think it was something to get hung up on. It might be time to raise it. Sigurd pointed out that \$100 didn't go very far.

Bob outlined that the Board needed to vote on the 4 variances before they had a motion for the subdivision.

Motion made by Jerry d'Aquin, and seconded by John Fleming, to approve variance #1 for a variance from the requirement that no lot shall be divided by a private road or right-of-way in order to allow the existing internal, looping road to divide lot #1. Sigurd checked on what was being said in this variance. Robert clarified that this variance was specifically for lot 1, and the fact that the easement divided the lot. It was not regarding use of the easement. It was leaving the easement in place. **Motion carried, all in favor.**

Motion made by Steve Rosso, and seconded by Rick Cothorn, to approve variance #2 for a variance from the minimum right-of-way width of 60 feet for two-way primary access roads as described in Table 4 of Section X.I.22, in regards to the Wolf Point Way right-of-way. **Motion carried, all in favor.**

Motion made by John Fleming, and seconded by Sigurd Jensen, to approve variance #3 for a variance from the requirement to bring Beaver Haunt Lane up to county standards. **Motion carried, 6 in favor (Bob Kormann, Sigurd Jensen, Steve Rosso, John Fleming, Brian Anderson, Rick Cothorn) and one opposed (Jerry d'Aquin).**

Bob read variance #4 regarding the buffer strip from the top of pg. 32. The variance requested was from the subdivision regulation that listed prohibited land uses and activities within the vegetative buffer area. Brian checked that they were asking for a variance so if they wanted to expand the structural footprint, they could. Steve said the whole building was in the buffer strip. Bob said they could replace it on the same site if something happened to the existing structure. The staff recommendation was not to accept this. Steve asked if there were some language or

rules that described what maintenance meant. If they had damage to the structure, at what point was it replacing, and at what point was it maintaining. Joel couldn't think of any in the subdivision regulations. Steve checked that if a tree fell on the house and crushed a corner, if they couldn't live in what was left, they were done. Joel said that would be up to interpretation at that point in time.

Motion made by John Fleming, and seconded by Steve Rosso, to accept the staff recommendation to deny variance request #4 which requested a variance from the vegetative buffer requirements as described on pg. 32. Motion to deny carried, 6 in favor (Bob Kormann, Jerry d'Aquin, Steve Rosso, John Fleming, Brian Anderson, Rick Cothorn) and one opposed (Sigurd Jensen).

The Board turned to consideration of the subdivision approval or disapproval. Diana reviewed that condition #13 was the interpretation of slopes 20% or greater for sustained lengths of 100 feet or longer. The staff and the agent had different views on whether there were sustained slopes by that definition. Joel noted the agent hadn't appealed the staff interpretation ~~of the meeting~~. Diana said this was difficult to do in the week before the meeting.

Bob mentioned the earlier request for clarification on #16 regarding on-street parking. Robert said what they did in the case of these items was to require what the Polson Fire Chief wanted in these particular items. Bob asked about Beaver Haunt Lane, and whether there was a turnout there now, as condition #16 called for an improved turnout. Hu B said there was no turnout currently. Bob confirmed with Robert that there would be a fire turnout if this were approved. Bob asked if that was in the buffer strip. Where would the turnout go? Could the road that went off Beaver Haunt Lane be considered a turnout? Robert said it wouldn't actually be within the buffer. The developers didn't necessarily own that, with the exception of the 10 feet that's proposed to be ceded for the purposes of the road. The road was a villa strip that wasn't owned by the developers. It wouldn't actually be located in the buffer strip.

Bob referred to the internal road that tied in to Beaver Haunt Lane. Robert clarified that this was a nameless easement. Bob asked if that could be considered a turnout for the fire dept. Brian pointed to the 30-foot emergency expansion on the drawing. Diana explained that since Chief John Fairchild wrote the original letter, he'd received some clarification on the subdivision and location. He and Marc Carstens drove down Beaver Haunt Lane. At that time, John Fairchild didn't feel there was an issue getting a truck there. They needed to follow that up with a letter from him, as part of the fire control plan, and to show if this was acceptable, to utilize the existing driveway to lot 1 as a turnaround for the fire trucks.

Bob outlined two items from #16 that were of concern, then. One was to prohibit on-street parking. The other was the approved turnout for the fire dept. Diana said the approved turnout wasn't going to become a concern for the fire department because they would review Beaver Haunt Lane. Bob noted that they had an [adjacent] owner who was in favor of this subdivision unless something had to happen to the road. Bob read this as Beaver Haunt Road would need an approved turnout for the fire department. Did that mean they had to create a turnout? Diana envisioned the existing condition of that road would be formalized with a letter from the fire department. Steve asked about no parking signs. Diana asked if you advertise it's a public street

and prohibit on-street parking, or did you let people continue to assume it was a driveway. Bob and Steve asked if it was currently used for parking. Hu B affirmed. He didn't think you'd want to prohibit parking. It was a 40-foot county access. It would be a problem to put up no parking signs since then people would park on the road. Someone asked how you would police it. Bob asked the Board if they wanted to eliminate #16.

On #19, Bob checked with Diana that she asked for that condition to be put in the covenants. Jerry asked if it could be in both places. Diana said that would be another document. The covenants were enforceable within the subdivision. It seemed redundant to have ~~it~~ another filed document when it could be put into the covenants.

Bob brought up the \$250 fire department donation. To him, it wasn't the matter of the money. He thought it should be more than \$250, but what about a 20-lot subdivision at \$250 each? Sigurd thought \$100 really wasn't sufficient. He didn't know if \$250 was the right amount either. They would be setting a precedent by changing it. John thought the basic question was whether the subdividers needed to contribute in some way. Steve mentioned there was some continuous revenue from taxes for the fire department. The question was when the lot was first created, should there be an impact fee. He thought that was okay. His problem with it was the jump of 2.5 times in the amount, when the fire chief hadn't said something to justify it. Bob proposed that perhaps the planners could suggest to the Polson Fire Chief. To formally propose something, he could talk to the other fire chiefs from the surrounding communities and address this at a Chiefs meeting. Rick observed that \$100 was insignificant. For some of the fire agencies in the county, they'd have to go to the Smithsonian to get parts for some of the equipment. Bob said it was just that the jump would set a precedent, without justification.

Bob asked Robert how he came up with a sustained slope 100 feet long of 20% slope. Robert gave detail on this for average slope, using the map, and the group discussed. Brian asked if there was construction planned in that zone. Robert said no. They hadn't approved the variance within that zone, and Diana might point out that there didn't appear to be construction proposed within those "sustained slopes". Steve asked if #13 could be changed to have a spot identified that was at least 100 feet long and at a grade of 20% or greater average slope to justify asking for a sediment control plan. Joel said that this had already been located. Joel and Steve discussed this further. Joel helped Steve find a spot that met this criteria. Steve concluded that #13 needed to be left as it was. John suggested changing the wording slightly: "If it's determined..." Steve agreed that if the applicant could show that there weren't slopes that met that requirement, they could get out of the plan. Joel suggested just adding "if applicable" at the end of the condition.

Motion made by Steve Rosso, and seconded by Sigurd Jensen, to recommend approval for the subdivision with conditions as recommended by staff with the following changes:

- **Condition #11: Reduce from \$250 per lot to \$100 per lot.**
- **Condition #13: Add "if applicable" to the end.**
- **Condition #16: Delete condition #16**
- **Condition #19: Rewrite to say that the proposed dust control plan shall be incorporated as language within the final subdivision covenants.**

Motion carried, 6 in favor (Bob Kormann, Sigurd Jensen, Steve Rosso, John Fleming, Brian Anderson, Rick Cothorn) and one opposed (Jerry d'Aquin).

HILL/ REID LAKESHORE VARIANCE REQUEST (8:53)

Karl Smithback described the lakeshore variance process. He presented the staff report. (See attachments to minutes in the June 2012 meeting file for staff report.)

John asked why the applicants requested to add 4 feet, since things would be a little bit more open without that. Allen Clark, agent on behalf of the applicants, referred to the 19-foot topography of the lakeshore frontage, as mentioned by Karl. They currently had 46 feet of use on one side of the dock, and they had 19 feet less than that on the other side of the dock because of the topography of the shoreline.

Steve read from the dock setbacks in the regulations. A minimum setback of 25 feet between the dock structure and the riparian boundary was given where boat access was necessary to a dock structure. If you had no plans for boat access, you didn't need a setback? Karl said that the attempt at common sense was to assume docks would have boat access. If someone wanted to make the case that it would not be used for boat access, they would evaluate it. In this case, there's a shore station. Steve said the shore station was on one side of the dock. Were they allowed to assume there was only boat access on one side of the dock? Or is the setback in effect all the way around if a boat comes up anywhere to the dock? Karl said the standard didn't specify that the setback was on the side accessed by the boat. Staff understood this to be both sides of the dock. Steve asked if this ~~lot~~~~dock~~ didn't have a grandfathered dock, it wouldn't be allowed to have a dock. Karl said it would require a variance. In some cases it might be that a dock wouldn't be appropriate on a property. This wasn't the case here. In other cases there were way to mitigate it.

Jerry asked if hypothetically, you tried to put a dock on a bare property of this kind, would you also allow a shore station. Karl couldn't say what the Commissioners would approve. Shore stations needed to meet a 15-foot setback. This one did not. However it wasn't attached to the existing dock nor would it be structurally attached to the proposed dock. The aerial coverage would come into play when they came in front of the Commissioners for the 3rd variance regarding impervious surface coverage. On a property that didn't have anything, it would probably be a lofty proposal to ask to put in a 50-foot dock, 8 feet wide, with a shore station.

Steve pointed to a reference to neighboring compliant docks on pg. 6 towards the end of the first paragraph under III. He thought the dock on the south side was only 15 feet from the riparian boundary, so it wasn't compliant. The one on the north side was also non-compliant. Karl agreed and thanked Steve for the correction.

Allen Clark spoke on behalf of the applicant. They had an existing 10 x 46-foot dock. They could repair it. They felt a better solution was to replace an old crib dock that was rotting with a state-of-the-art dock. It would create a better flow through the dock system for the environment as well. The old dock was grandfathered in, so they could repair it and maintain it. They could put in something that was new that was the same size and be more user-friendly for the neighborhood, and place more value on the property as far as Lake County and taxes. Regarding the 4-foot extension of 40 square feet, the dock could become more useable due to the topography of the lake frontage. They were comfortable that the docks on either side of them

didn't meet the new criteria either. The neighbors were both happy to see improvement to this existing dock and the addition to the dock. He said that Brett McCrumb would speak about the technical aspects of the dock.

Brett McCrumb described the potential dock as having some flow-through rather than being a solid crib. To repair part of the existing dock, you'd have to repair the whole thing, which didn't really work on this dock. Allen checked that they were still under the square footage. Brett said that depended. This was so over the water, but not maybe as far as the surface.

Bob checked that this was off the reservation. Brett confirmed. Bob asked what Brett thought the Tribe would say about the new flow-through compared to the old crib. Brett said they would be in favor of the flow-through. He'd done several of these in the Big Arm area with the same circumstance of being on a property line. He'd gone through a Board for a variance, and had been granted, as long as it was existing. They would not grant a new dock, if there wasn't one there, without having the criteria.

Bob brought up the shore station. It would be in the same location? Brett said everything was existing, except the 4-foot extension. They would pick up the shore station, move it over and then put it back. Karl said he would have to check the movement of the shore stations with the regulations. He wasn't sure you could move the shore station. If you were picking it up, you were removing it. This was something they could figure out. Steve asked if this applied for a temporary move, where you moved it back to the same spot. Joel said this was removal, if you detached it from where it was affixed. The group spoke about this briefly. Joel noted this was from language in the nonconforming use section.

Steve asked why the dock needed to be kept in the same orientation. If it were stuck more straight out, angled more towards the south, how would that be? Allen suggested they'd encroach more on the riparian line. Riparian boundaries were discussed. Karl agreed with keeping the current orientation, but for the reason of spacing between the adjacent docks. Allen agreed.

John asked what would be likely to happen to the shoreline at high water on the right side if this was replaced with a flow-through dock. Karl responded to an earlier comment about the 4-foot extension. Conceivably, the 4 feet wouldn't be necessary. With a flow-through dock, you could almost draw a line of best fit, and that was probably where the shoreline would end up. That might recede to some degree, but he stressed that he was not a hydrologist. Allen highlighted the existing rock retaining wall. It wouldn't erode that. Karl said maybe that side wouldn't change substantially. He thought there would be some change, which he further thought would be negligible. Allen pointed out rock wall and gravel.

Steve checked that the existing dock was 10 feet wide and the proposed dock was 8 feet wide. Allen said the proposed dock was also 10 feet wide. Steve noted that going with an 8-foot wide dock would reduce the square footage. Allen thought they were in compliance with the square footage on the dock. Steve thought they were over. Karl thought the proposed dock was 8-feet wide, as depicted on the plans. Allen said this was a mistake on the application, which said replace existing 8 x 46 dock. It was actually 10 x 46. Brian said it showed 8 feet on the drawing

as well. At 10 feet, this was more of a deck than a dock. Karl observed this would change his impervious surface calculations. As it stood, it was over the permitted amount by about 400 square feet. Brian noted this was on pg. 9, #4 and Joel pointed out where pg. 1 talked about it. Karl read from the Brief Project Description on pg. 1. Those calculations were in anticipation of an 8-foot wide dock. Brian estimated that this would add another 100 square feet. Brett checked that they counted boat covers or just the canvas.

Steve asked what the ground was like under the docks. He said some of the dock wasn't over the water, which would help a small bit. Bob confirmed that the drawings the Board had were based on the 8-foot width. Karl noted that what was out in the lake was what would change. Those measurements were based on the assumption that the dock was 8 feet wide. He used GIS software to figure that out. It would be 24 feet on one side and 18 feet on the other. Bob asked how that changed impacts as far as the report. Karl thought this tied in to what he mentioned about possibly redesigning it to minimize impacts. He still thought this was an option. That specific variance request would go to the Commissioners. The Board could still contemplate recommending, for example, that the Commissioners adopt a condition that referenced the dock width. They would have to be able to defend that by making findings that demonstrate that 10 feet versus 8 feet had different impacts.

Bob asked what the owner would think about an 8-foot dock. Allen thought they would be fine with an 8 x 50 dock. Karl said the 8 feet would be more in line with the County policy. The regulations didn't speak directly to it, but they have said in the past that something over 8 feet in width started to resemble a deck over the water. Eight feet would be more in line with other approvals. Bob said what he was hearing was that they could consider this the way it was proposed, at 8 feet wide and 50 feet long.

Steve checked that no batter boards were planned for the dock. It was totally flow-through. One of the agents commented that the pilings and joists were steel.

Public comment opened: None offered. *Public comment closed.*

Bob checked on whether the shore station would require another variance in order to be moved, and if so, if the Board could incorporate that tonight. Karl said the Board was making a recommendation, rather than actually approving. With regards to the shore station situation, that might not need to come in front of the Board and the Commissioners could deal with that.

Although setting a precedence of approving nonconforming structures was probably not a great thing to do, Steve thought this wasn't much different than the existing dock that had been there a long time. The neighbors had nonconforming docks, and it seemed like there were a lot of 50-foot wide lots on the lake. It would be a shame to do something that would prevent those people from having another dock. He was for recommending approval. John pointed out they were gaining something here too, such as a flow-through dock. Bob asked if letters had been sent to the adjoining owners. Karl affirmed.

Steve prepared to make a motion to recommend approval for building an 8 x 50 flow-through dock with pilings and no batter boards. Jerry asked if the shore station needed to be included.

Karl said it did not, but they should mention that the decision was that the proposal complied with the policy criteria. Steve checked that the policy was they add docks that respect the environment and allow boating navigation for the neighbors. Were those the policies? Karl explained that the proposed findings of facts noted the policies. He read an example. What the Board would be saying was that they found the proposal complied with the criteria. John summarized that the Board would accept those findings of fact. Karl suggested changing batter boards to baffle boards, and Brett suggested calling it a wave wall.

Motion made by Steve Rosso, and seconded by Rick Cothorn, to recommend approval of the variances required to build an 8-foot wide, 50-foot long flow-through dock with pilings and no baffle boards, and adopt the staff-recommended findings. Motion carried, all in favor.

OTHER BUSINESS

Board applicant Roland Godan introduced himself.

Regarding fire, Diana Luke commented that the Sanders County Commissioners adopted a policy for \$500 per lot. Fire fees were discussed further.

Bob asked about Lake Mary Ronan zoning. Joel replied that the County Attorney's office was looking for the next direction.

The lakeshore protection regulations section on vegetation management might be revisited in July.

Motion made by Sigurd Jensen, and seconded by Rick Cothorn, to adjourn. Motion carried, all in favor. Meeting adjourned at approximately 9:40 pm.